



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Eric Shields, Planning Director
Date: September 4, 2014
Subject: Marijuana Interim Zoning Regulations

RECOMMENDATION

- After conducting a public hearing, adopts the attached ordinance extending the interim regulations governing the location of retail marijuana businesses.
- Provide direction on drafting Zoning Code amendments to replace the interim regulations. Several options are provided below.

BACKGROUND DISCUSSION

Interim Regulations

Under state law, interim regulations have a maximum duration of six months but may be renewed while the City prepares code amendments to replace the interim regulations. As noted below, the current interim regulations will expire on September 29, 2014, six months after the effective date of Ordinance O-4439. The proposed ordinance would renew the regulations for another six months until near the end of March, 2015. Prior to extending the interim regulations, a new public hearing is required.

History

On February 4, 2014, the City Council adopted **Ordinance O-4434** establishing interim regulations prohibiting the sale of marijuana in the Market Street Corridor (MSC) 1 zone due to several concerns: 1) proximity to school walk routes, 2) unknown traffic impacts of marijuana retail businesses, and 3) the existing lack of retail use in the MSC 1 zone.

On March 18, 2014, the City Council adopted **Ordinance O-4439** which replaced O-4434 and established the following new interim regulations for the retail sale of marijuana:

- Allowed marijuana sales in zones that allow retail establishments except:
 - Market Street Corridor (MSC) 1 and 2 zones due to adjacency to School Walk Routes;
 - Other properties abutting School Walk Routes;
- Allowed marijuana sales in three light industrial zones: Totem Lake (TL) 7, TL 9, and Light Industrial Technology (LIT);
- Required the containment of marijuana odors;
- Established enforcement authority for the interim regulations.

The ordinance was published on March 24, 2014 and became effective five days thereafter.

On June 17, 2014, the City Council adopted **O-4446** (corrected on July 2, 2014 by **O-4447**) which revised the provisions of O-4439 by limiting marijuana sales in LIT zones to only where at least 50 percent of the boundary of the zone is adjoining commercial zones. This effectively limited marijuana sales in LIT zones to only the LIT zone located south of NE 90th St. along 122nd Ave. NE. Ordinance O-4447 expires six months from the effective date of O-4439, which is September 29, 2014.

On August 13, 2014, Planning and Community Development staff attended a meeting of the Kirkland Alliance of Neighborhoods (KAN) to discuss regulations governing the sale of marijuana. At the meeting, KAN representatives voted to recommend that the interim regulations be extended, but they did not discuss options for new Zoning Code regulations.

State Regulations

Initiative 502, which legalized the sale of marijuana in Washington State, prohibits marijuana sales, processing or production within 1,000 feet of public parks, elementary and secondary schools, state licensed child care centers, playgrounds, recreation centers, game arcades where admission is not restricted to persons 21 or over and public transit centers. The determination of whether proposed marijuana businesses comply with these restrictions is made by the Washington State Liquor Control Board (WSLCB). The WSLCB has indicated that any parcel that has any portion of its area located within a 1,000 foot arc from one of the protected sites will be considered to be ineligible for a license.

Based on City population from the last census, Kirkland has been allotted a maximum of two retail licenses. The WSLCB indicated that it will issue licenses only on the basis of state regulations. Cities will have to enforce their own regulations.

State Legislative Changes

The Council has asked the Legislative Committee and the staff to seek city authority to modify state marijuana restrictions as part of the 2015 state legislative agenda. Staff will be presenting a preliminary legislative agenda to the Council at the October 6 Council meeting that includes city siting flexibility as a top priority item.

Kirkland Marijuana Businesses

To date, only one marijuana business, a processor, has been approved by the WLCB to operate in Kirkland: Dynamic Harvest to be located at 13513 NE 126th Place #B (in the eastern part of the Totem Lake business district). The business has not yet started operation or applied for a Kirkland business license.

SEPA Compliance

The adoption of interim regulations is subject to compliance with the State Environmental Policy Act (SEPA). A SEPA Addendum to the March 13, 2014 Determination of Nonsignificance was issued on September 4, 2014.

Preparing Code Amendments

As the interim regulations are renewed, staff asks that the City Council provide guidance on the preparation of Zoning Code regulations for marijuana sales, processing and production that will replace the interim regulations. Keep in mind that any option that involves a change to the zoning regulations will require the Planning Commission to conduct a public hearing and make a recommendation to the City Council. The Commission and staff are currently very busy in

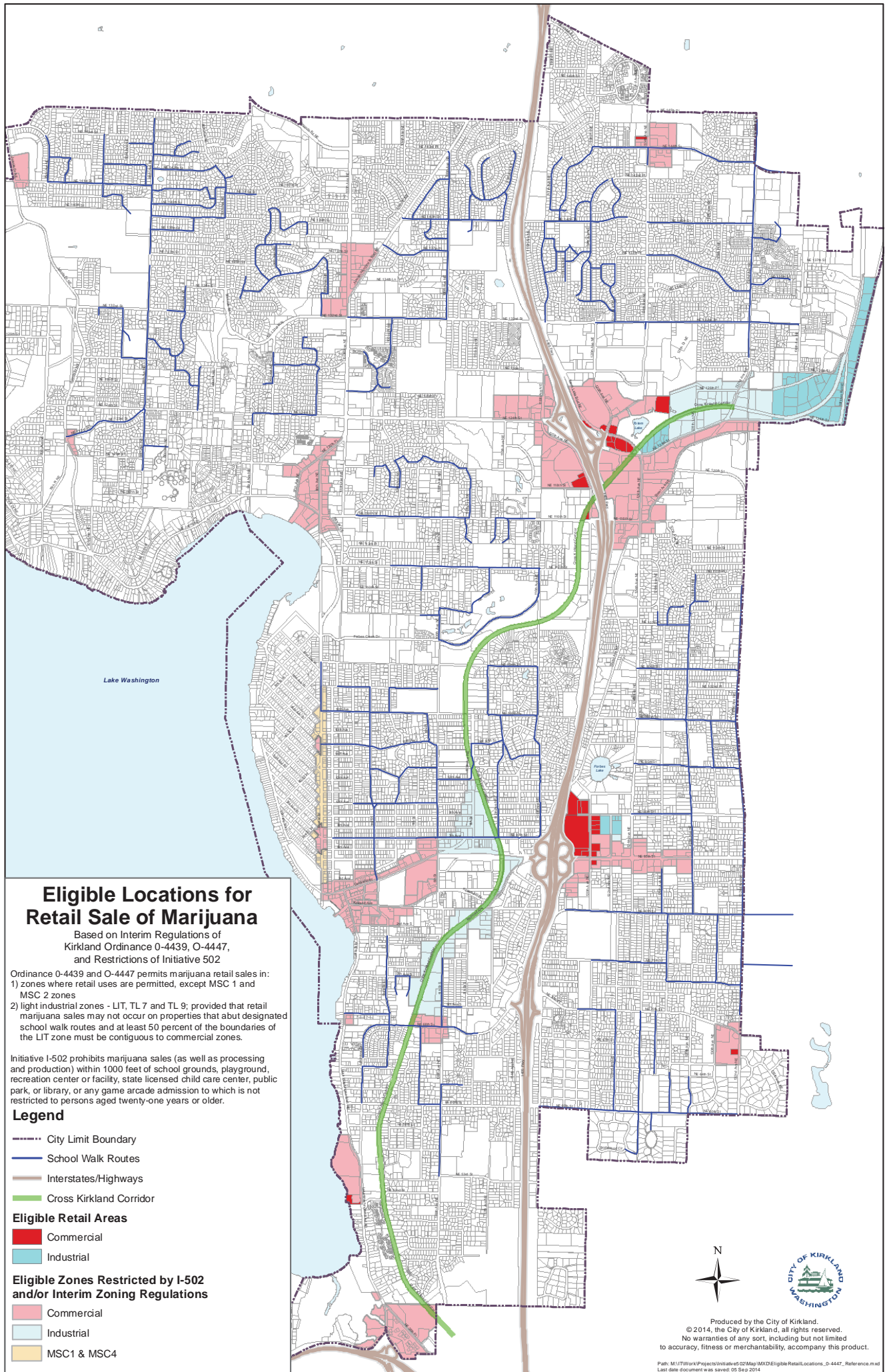
preparing the Comprehensive Plan update. Several options are listed below:

- A. Processing and production – To date these activities have not been a major community concern. Although the Zoning Code does not specifically address marijuana processing and production, these activities are allowed in all zones where general processing and production are allowed, specifically LIT, TL 7, TL 9, TL 10B, TL 10D and TL 10E. The location of light industrial uses will be the subject of further discussion in the Comprehensive Plan Update, particularly in the Totem Lake area. Unless the Council would like a more detailed examination of where marijuana processing and production should be allowed, there is no need for further Zoning Code amendments for these uses. Staff requests that the City Council indicate whether further review of marijuana processing and production uses is desired.
- B. Retail Sales. The following options may be considered for adopting final regulations for marijuana retail uses after extending the interim regulations:
 1. ***Prepare code amendments that reflect the current interim regulations.*** This would be a relatively simple task. Prior to the public hearing, public input could be solicited using an existing neighborhood and business groups such as the Kirkland Alliance of Neighborhoods and the Kirkland Chamber of Commerce. These code amendments could be updated later if state legislative flexibility is achieved.
 2. ***Undertake a more in-depth study of appropriate locations prior to expiration of the interim regulations.*** This option would entail significantly more work than the first option and could involve using existing organizations or the formation of an advisory committee addressing this particular topic. Working on this option prior to completion of the Comprehensive Plan Update would require diversion of staff and Planning Commission resources from the Update and would likely extend the completion date of the Update.
 3. ***Plan to extend the interim regulations one additional time prior to drafting new code amendments.*** This option would allow staff and the Planning Commission to focus on completing the Comprehensive Plan Update during the next six months. It would also allow time for the City to discuss potential changes to I-502 with the state legislature. Then, if legislative changes are made, City code amendments could reflect those changes.

Staff recommends Option 1 or Option 3.

Attachments:

1. Map of allowable retail marijuana locations under existing interim regulations and I-502.



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ORDINANCE O-4453

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, AMENDING ORDINANCE O-4447 TO EXTEND THE INTERIM ZONING REGULATIONS REGARDING THE RETAIL SALE OF RECREATIONAL MARIJUANA, ENACTED BY ORDINANCE O-4447, PROVIDING FOR SEVERABILITY, AND APPROVING A PUBLICATION SUMMARY.

WHEREAS, Initiative 502 (I-502) approved by Washington voters in November 2012, provides a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana; and

WHEREAS, the Washington State Liquor Control Board has adopted rules pertaining to the licensing of marijuana producers, processors, and retailers, has accepted applications, and has issued licenses for some of these marijuana businesses; and

WHEREAS, the State Liquor Control Board has determined that two state licenses for the retail sale of recreational marijuana may be issued for the City of Kirkland; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating or banning marijuana businesses; and

WHEREAS, the City Council has continued to review how to reconcile the needs of the residents and businesses of Kirkland with respect to the retail sale of recreational marijuana, with I-502, and the rules promulgated by the Washington State Liquor Control Board; and

WHEREAS, the City Council believes that health, safety, and welfare of the community is best served by imposing interim zoning regulations, with reasonable limitations, to avoid locating recreational marijuana retail outlets next to incompatible uses, while permanent Zoning Code amendments are considered; and

WHEREAS, following public hearing, the City Council adopted Ordinance O-4439 on March 18, 2014, enacting interim zoning regulations regarding the retail sale of recreation marijuana, which ordinance was subsequently amended by Ordinances O-4446 and O-4447; and

WHEREAS, the interim zoning regulations will expire on September 29, 2014, unless the interim regulations are extended; and

WHEREAS, on September 5, 2014, a State Environmental Policy Act addendum was issued for the interim zoning regulations extended by this Ordinance; and

WHEREAS, the City Council conducted a hearing on September 16, 2014, providing an opportunity for the public to comment on the interim zoning regulations relating to the retail sale of recreational marijuana prior to the adoption of an extension; and

WHEREAS, the City staff and Planning Commission continue to follow the activities of the State Liquor Control Board and challenges brought concerning the legality of marijuana regulations enacted by other Washington cities; and

WHEREAS, the City anticipates that additional review related to the licensing, siting, and taxation of recreational marijuana may be forthcoming during the next session of the Washington State Legislature; and

WHEREAS, the actions of the State Liquor Control Board, State Legislature, and courts will inform the recommendations of the City staff and Planning Commission prior to the City Council consideration of any permanent zoning regulations being adopted; and

WHEREAS, the City has the authority to enact interim zoning regulations under RCW 35A.63.220 and RCW 36.70A.390.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Findings. The recitals set forth above are incorporated as findings of fact in support of the interim regulations extended by this Ordinance. The City Council further finds as follows:

- a. The City Council wishes to exercise its police power authority granted under article XI, section 11 of the Washington Constitution to promote public safety, health, and welfare, but expressly disclaims any intent to exercise authority over marijuana uses in way that would conflict with the federal Controlled Substances Act; and
- b. It is the intent of these interim zoning regulations to ensure that marijuana retail outlets are not located where the use could cause inappropriate off-site impacts; and
- c. The Kirkland School Walk Routes have been identified based on considerations of existing traffic patterns and providing the greatest separation between walking children and traffic; and
- d. The Market Street Corridor (MSC) MSC 1 and MSC 2 zones each abut or contain segments of Kirkland School Walk Routes developed with crosswalks and flashing beacons to encourage use by walking children; and
- e. The potential for vehicular and pedestrian traffic impacts on Kirkland School Walk Routes as a result of proximity to marijuana retail outlets in Washington State is, as yet, unknown; and

- f. Allowing recreational marijuana uses in Light Industrial Technology (LIT) zones primarily adjoining commercial zones lessens the potential for traffic conflicts with residential neighborhoods; and
- g. The public safety risks associated with retail marijuana outlets in Washington State are, as yet, unknown; and
- h. These interim zoning regulations are designed to avoid potential adverse consequences and provide the opportunity to gather data and study, draft, and adopt permanent regulations; and
- i. The City Council desires to create regulations that address the particular needs of the residents and businesses of Kirkland and coordinate with I-502 and the rules promulgated by the Washington State Liquor Control Board regarding recreational marijuana; and
- j. Under these interim regulations there remain other potential sites within the City where the zoning would permit retail marijuana outlets and the properties appear to be located more than 1,000 feet from elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, or any game arcades (where admission is not restricted to persons age 21 or older), the minimum criteria of the State Liquor Control Board; and
- k. The City Council has also determined that City staff shall draft permanent Zoning Code amendments for referral to the Planning Commission for review, public hearing, and recommendation by the Planning Commission.

Section 2. Amendment. The duration of the interim zoning regulations set forth in Section 3 of Ordinance O-4447, and this Ordinance, is extended for an additional six-month period as stated in Section 5 below.

Section 3. Interim Zoning Regulations.

- a. Except as prohibited in subsections (b) and (c) below, marijuana retail outlets licensed by the Washington State Liquor Control Board and fully conforming to state law may locate in the following use zones:
 - 1. Use zones where Retail Establishments are allowed;
 - 2. Light Industrial Technology (LIT) zones determined by the City as having at least 50 percent of the boundaries of such zone adjoining commercial zones; and
 - 3. Totem Lake (TL) TL 7 and TL 9 zones.
- b. No marijuana retail outlet may locate in the Market Street Corridor (MSC) MSC 1 and MSC 2 zones.
- c. Marijuana retail outlets shall not locate on any subject property abutting a street segment or public right-of-way segment that includes a Kirkland School Walk Route as shown on Exhibit 1.

d. These interim zoning regulations shall be enforced using the procedures and penalties for violations of the Zoning Code established under Kirkland Municipal Code Chapter 1.12, "Code Enforcement."

Section 4. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

a. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

b. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

c. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.

d. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

e. "Kirkland school walk routes" means the school walk routes adopted by the City Council based upon the walk routes identified by the Lake Washington School District within a one-mile radius of all public elementary schools in the City.

f. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Section 5. Duration. The duration of the interim zoning regulations adopted by Ordinance O-4447 shall be extended for a period of six months from the effective date of this Ordinance and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Kirkland City Council.

Section 6. Work Plan. The City staff is directed to draft permanent Zoning Code amendments. The proposed amendments shall be referred to the Kirkland Planning Commission for review, public hearing, and recommendation for inclusion in the Kirkland Zoning Code.

Section 7. Severability. Should any provision of this Ordinance or its application to any person or circumstance be held invalid, the

remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 8. Effective Date. This Ordinance shall be in force and effect five days after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to this Ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of September, 2014.

Signed in authentication thereof this ____ day of September, 2014.

MAYOR

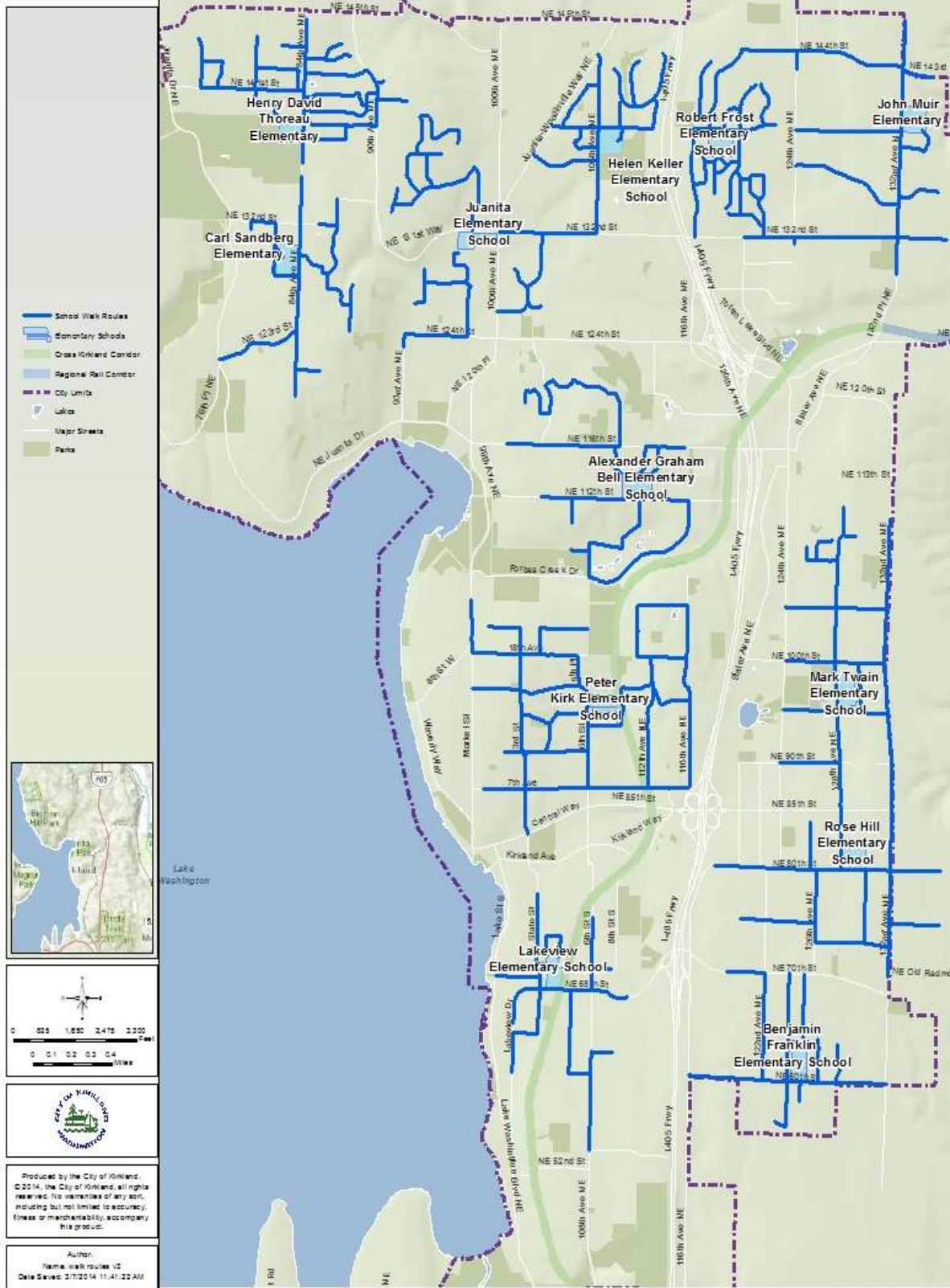
Attest:

City Clerk

Approved as to Form:

City Attorney

Kirkland School Walk Routes - March 18, 2014



PUBLICATION SUMMARY
OF ORDINANCE O-4453

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, AMENDING ORDINANCE O-4447 TO EXTEND THE INTERIM ZONING REGULATIONS REGARDING THE RETAIL SALE OF RECREATIONAL MARIJUANA, ENACTED BY ORDINANCE O-4447, PROVIDING FOR SEVERABILITY, AND APPROVING A PUBLICATION SUMMARY.

SECTION 1. Adopts findings for the interim regulations.

SECTION 2. Amends Ordinance 4447 to extend duration of interim regulations by six months.

SECTION 3. Sets forth interim zoning regulations.

SECTION 4. Defines terms used in the ordinance.

SECTION 5. Sets forth the duration of the ordinance.

SECTION 6. Sets forth the work plan.

SECTION 7. Provides a severability clause for the ordinance.

SECTION 8. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its meeting on the ____ day of _____, 2014.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk